

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CASE NO.: 4:13-CR-00319-DW-03
V.) JUNE 30, 2015
) KANSAS CITY, MISSOURI
MICHAEL SMITH,) CRIMINAL
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS

SENTENCING

BEFORE THE HONORABLE DEAN WHIPPLE
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES

For Plaintiff: Ms. Kathleen D. Mahoney
United States Attorney's Office
400 East Ninth Street
Kansas City, Missouri 64106

For Defendant: Ms. Lisa Nouri
2526 Holmes
Kansas City, Missouri 64108

For Probation and Pretrial: Mr. Johnathan M. Smith

Proceedings recorded by machine shorthand recording,
transcript produced by computer-aided transcription.

Sandra D. Lamken, CCR, RPR
United States District Court Reporter
Charles Evans Whittaker Courthouse
400 East Ninth Street
Kansas City, Missouri 64106
816-512-5622

JUNE 30, 2015

*(The following hearing was held in open court
beginning at 11:05 a.m., counsel and defendant present:)*

THE COURT: Good morning. Please be seated.

MS. MAHONEY: Good morning.

MS. NOURI: Good morning, Your Honor.

THE COURT: Are we ready on Mr. Smith's case?

MS. NOURI: We are, Your Honor.

THE COURT: All right. Mr. Smith, would you come up
to the podium with your attorney while I call this case for
hearing?

(So done.)

THE COURT: The Court will call Case Number
13-00319-03, *United States of America vs. Michael Smith.*

Are you Michael Smith?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you're represented by Ms. Lisa
Nouri; is that correct?

THE DEFENDANT: Yes.

THE COURT: Mr. Smith, you appeared in front of me
last November, on November the 3rd, 2014, and pled guilty to
Count One of a multi-count, multi-defendant charge. You pled
guilty to Conspiracy to Commit Use of Fire in a Federal Crime,
Arson, Mail Fraud, and Wire Fraud.

I questioned you under oath concerning that offense,

11:06:59 1 accepted your plea of guilty, and ordered a presentence
11:07:03 2 investigation to assist us in determining what would be an
11:07:06 3 appropriate sentence.

11:07:07 4 Now that presentence report is done and you should
11:07:10 5 have received a copy of it. Did you?

11:07:12 6 THE DEFENDANT: Yes, sir.

11:07:13 7 THE COURT: Have you had it for at least
11:07:15 8 fourteen days?

11:07:16 9 THE DEFENDANT: Yes, Your Honor.

11:07:16 10 THE COURT: Now I need to ask your attorney,
11:07:19 11 Ms. Nouri, do you know of any additions or corrections we need
11:07:22 12 to address?

11:07:24 13 MS. NOURI: No, Your Honor.

11:07:25 14 THE COURT: All right. Now, Mr. Smith, at the time
11:07:32 15 I took your plea of guilty I discussed with you the fact that
11:07:36 16 we use these Federal Sentencing Guidelines to determine an
11:07:39 17 appropriate sentence. That was also done in this presentence
11:07:44 18 report.

11:07:44 19 In this presentence report it shows a total offense
11:07:48 20 level of twenty-one points. It shows you have a criminal
11:07:52 21 history category of one. The Guidelines suggest a sentencing
11:07:56 22 range of thirty-seven to forty-six months. Any period of
11:08:00 23 incarceration to be followed by one to three years' supervised
11:08:04 24 release. The fine range is \$7,500 to \$75,000, and the
11:08:10 25 restitution is indicated in the amount of \$50,764.51. There

11:08:25 1 must be a one-hundred-dollar special assessment.

11:08:27 2 That appears to be the applicable guidelines. Is
11:08:32 3 there any objections to the calculations by the government?

11:08:34 4 MS. MAHONEY: No, Your Honor.

11:08:35 5 THE COURT: Ms. Mahoney, I was trying to look as I
11:08:39 6 was reading that, there's no forfeiture, preliminary
11:08:43 7 forfeiture judgment, for this defendant?

11:08:46 8 MS. MAHONEY: There should have been.

11:08:48 9 THE COURT: I'm looking here.

11:08:50 10 MS. NOURI: There was.

11:08:50 11 MS. MAHONEY: I believe there was, Your Honor.

11:08:53 12 THE COURT: All right. Here's restitution and that
11:09:00 13 50,000.

11:09:00 14 MS. MAHONEY: Your Honor, I believe we filed a joint
11:09:04 15 preliminary order -- or a preliminary motion for all the
11:09:08 16 defendants.

11:09:09 17 THE COURT: For the same amount?

11:09:11 18 MS. MAHONEY: Yes, Your Honor, for the money
11:09:14 19 judgment.

11:09:15 20 THE COURT: All right.

11:09:16 21 MS. MAHONEY: Yes. And Ms. Nouri has a copy.

11:09:18 22 THE COURT: Could it be in that plea agreement?

11:09:21 23 MS. NOURI: No, Your Honor.

11:09:21 24 THE COURT: I don't have it anywhere in my files.
11:09:25 25 Give me an amount, please.

11:09:27 1 MS. MAHONEY: I'm sorry. Yes, Your Honor.

11:09:30 2 THE COURT: Wait. Did I enter a preliminary order
11:09:34 3 of forfeiture?

11:10:00 4 It shows a forfeiture by way -- this is moving for
11:10:25 5 an order forfeiting the following property, and it lists the
11:10:30 6 six properties. Well, it lists more than that. It lists
11:10:40 7 eight properties.

11:10:42 8 Why is there eight properties and as well as a money
11:10:47 9 judgment in the amount of \$434,938?

11:10:55 10 The defendant also specifically agreed to the
11:11:01 11 forfeiture allegation. Do you remember that?

11:11:07 12 THE DEFENDANT: Yes, Your Honor.

11:11:08 13 THE COURT: Just barely, right?

11:11:11 14 THE DEFENDANT: Yeah.

11:11:11 15 MS. MAHONEY: Your Honor, I would agree to limit it
11:11:13 16 to the amount that has been found should be due in restitution
11:11:16 17 for this defendant, which is \$50,764.37 for the order of
11:11:27 18 forfeiture as well as the restitution.

11:11:28 19 THE COURT: You mean enter the forfeiture in that
11:11:33 20 same amount?

11:11:34 21 MS. MAHONEY: Correct. Just to make things
11:11:37 22 hopefully simpler.

11:11:38 23 MS. NOURI: What was that total number?

11:11:40 24 MS. MAHONEY: It's \$50,764.37, which is the amount
11:11:46 25 for the restitution.

11:11:47 1 MS. NOURI: Thank you.

11:11:48 2 THE COURT: All right. So we'll just show the
11:11:58 3 forfeiture in the same amount as the restitution.

11:12:01 4 All right. Now having made the findings as to the
11:12:07 5 -- I need to make findings as to the Guidelines, and then
11:12:10 6 we'll take up the motion, the government's motion for downward
11:12:13 7 departure.

11:12:13 8 Is there any objections to the calculations of the
11:12:17 9 Guidelines in this case?

11:12:19 10 MS. MAHONEY: No, Your Honor.

11:12:20 11 MS. NOURI: No, Your Honor.

11:12:20 12 THE COURT: Are there any by the defense?

11:12:22 13 MS. NOURI: There are none.

11:12:24 14 THE COURT: Then those are the Guidelines I'm
11:12:26 15 considering, but now let's take up the government's motion for
11:12:32 16 downward departure. Ms. Mahoney?

11:12:33 17 MS. MAHONEY: Yes, Your Honor. I would urge this
11:12:36 18 Court to admit my motion for downward departure and grant the
11:12:43 19 motion. Mr. Smith was the first of these conspirators to
11:12:47 20 admit his involvement.

11:12:50 21 Mr. Stamps is his brother-in-law, and in the
11:12:54 22 government's opinion, and I think this is borne out in the
11:12:56 23 presentence report investigation by probation, Mr. Stamps was
11:13:00 24 not only more culpable, but many multitudes more culpable than
11:13:09 25 any of the codefendants. He engineered this entire scheme.

1 He recruited the codefendants. He led the scheme at every
2 level. He was the primary person who profited from the
3 scheme.

4 I do not believe that the rest of the defendants
5 would have become involved without him, not to say that
6 they're not responsible for their actions, but just to say
7 that I think that goes to their future dangerousness.

8 Because Mr. Stamps was Mr. Smith's brother-in-law
9 when he, both, admitted his conduct and agreed to work
10 proactively with the police and wear a wire and cooperate,
11 that took some personal resolve and courage.

12 So for those reasons, Your Honor, I would urge the
13 Court to grant the motion for downward departure. I would
14 recommend that Mr. Smith serve a sentence of probation and
15 then the restitution as laid out in the presentence report.

16 THE COURT: Thank you.

17 Ms. Nouri, what's your position?

18 MS. NOURI: Well, Your Honor, certainly we concur
19 with that, but I might add that I would predict at the end of
20 the day, the government had sent some forfeiture paperwork to
21 all defendants that they always do, not only has my client
22 filled it out, he has courteously provided the last six years
23 tax returns to the government, and he's paid his
24 one-hundred-dollar special assessment before court, Your
25 Honor.

11:14:33 1 He's a law-abiding citizen. He had, I would call
11:14:39 2 it, been hounded or been badgered by Joshua Stamps for several
11:14:44 3 months to participate in this. He finally succumbed. When he
11:14:49 4 was confronted by law enforcement, I believe he gave three
11:14:52 5 proffers. He wore a wire over several weeks or months.

11:14:56 6 He's very bright with numbers, which is evidenced by
11:15:02 7 his whole adult work career in the trucking industry, but I
11:15:06 8 would call him naive, gullible, and immature in a lot of ways.
11:15:11 9 He's easily influenced and, I would suspect, taken advantage
11:15:15 10 of.

11:15:15 11 I'm not minimizing his culpability, but I'm telling
11:15:19 12 you this guy will never reoffend, and I probably can only say
11:15:23 13 that two or three times in my career. I know this guy will
11:15:27 14 never commit another crime, but he's embarrassed. He feels
11:15:30 15 bad. He's got depression issues. He has a lack of affect all
11:15:35 16 the time when I'm with him, and this case has just made his
11:15:40 17 depression, I think, that much more prevalent and apparent.
11:15:45 18 But he's ready to get it behind him and move on, and he will
11:15:49 19 do whatever it is that probation would ask him to do, and he
11:15:53 20 will just continue working, and, you know, he will listen to
11:15:53 21 what his probation officer says.

11:15:55 22 He lives with his mom, who is present, and we're not
11:15:59 23 going to have any problem with him and I don't think he'll
11:16:03 24 ever be so taken advantage of or easily influenced like that
11:16:08 25 ever again. This has cost him his pride that he didn't commit

11:16:13 1 crimes and now he's a felon.

11:16:16 2 THE COURT: All right. Mr. Smith, do you have any
11:16:19 3 statement to make before I pronounce a sentence on you?

11:16:22 4 THE DEFENDANT: Honestly, just, this was never a
11:16:26 5 place where I thought I would be in my life right now, and I
11:16:30 6 never thought I would be one to have a felon on my record or
11:16:34 7 felony on my record. And I've always done everything that I
11:16:38 8 can to provide for myself and to attain all that I could, to
11:16:42 9 do all for myself that I can and to be at a better place, to
11:16:46 10 make my family proud and friends proud. But I never thought I
11:16:50 11 would be here. I definitely will never do anything like this
11:16:53 12 again, and I can honestly say that this was definitely one of
11:17:00 13 the worst mistakes of my life, so ...

11:17:03 14 THE COURT: All right. Thank you, Mr. Smith.

11:17:05 15 Mr. Smith, I'm going to follow the government's
11:17:08 16 recommendation, and I'm going to place you on probation for a
11:17:10 17 period of three years under the supervision of the U.S.
11:17:14 18 Probation and Parole Office.

11:17:15 19 I'm going to find you do not have the ability to pay
11:17:21 20 a fine or any cost of incarceration now or in the future.

11:17:27 21 I will be entering the restitution judgment and
11:17:30 22 forfeiture judgment as -- now, is that really two different
11:17:36 23 amounts or the same amount?

11:17:37 24 MS. MAHONEY: It's the same amount. It is just via
11:17:41 25 two different forms.

11:17:42 1 THE COURT: Oh. So does he owe \$101,480 -- how much
11:17:48 2 does he owe?

11:17:48 3 MS. MAHONEY: Your Honor, I'm requesting only the
11:17:51 4 50,764.37 for his portion.

11:17:56 5 THE COURT: I will enter a judgment of restitution
11:17:58 6 and forfeiture combined, for a total amount of \$50,764.54; is
11:18:05 7 that correct?

11:18:05 8 MS. MAHONEY: I think it's 37 cents.

11:18:07 9 THE COURT: Pardon me?

11:18:07 10 MS. NOURI: Thirty-seven.

11:18:09 11 MS. MAHONEY: Thirty-seven.

11:18:09 12 MS. NOURI: Point three-seven, Your Honor.

11:18:12 13 THE COURT: Well, that is. I wrote it down wrong.
11:18:15 14 I wonder where I got that.

11:18:19 15 Mr. Smith, having advised you of the punishment I'm
11:18:24 16 going to assess against you, do you have any reason why this
11:18:29 17 judgment and sentence should not be formally pronounced upon
11:18:31 18 you at this time?

11:18:32 19 THE DEFENDANT: No, Your Honor.

11:18:32 20 THE COURT: Allocution is granted to the defendant.

11:18:35 21 It is the judgment and sentence of this Court that
11:18:38 22 defendant Michael Smith shall be placed -- stay imposing any
11:18:46 23 sentence and place the defendant on probation for a period of
11:18:48 24 three years under the supervision of the U.S. Probation and
11:18:52 25 Parole Office.

1 The Court finds the defendant does not have the
2 ability to pay a fine or any cost of incarceration. Those
3 items will be waived.

4 The Court enters judgment against the defendant in
5 the amount of one-hundred dollars, a special assessment
6 judgment, which is a final judgment due and payable today.

7 The Court enters a restitution and forfeiture
8 judgment of \$50,764.37, that being a total amount owed for
9 restitution and for forfeiture.

10 Now, Mr. Smith, I'm placing you on probation for
11 three years. You shall conform your conduct to the standard
12 rules that are in place at the time -- well, now, because
13 you're being placed on them now. In addition to those
14 standard conditions, I'm going to impose some special
15 conditions:

16 Number one, you shall submit your person, any
17 property, house, residence, office, vehicle, papers, computer,
18 or other electronic communication or data-storage devices to
19 be searched by a U.S. probation officer at a reasonable time
20 and in a reasonable manner, based upon reasonable suspicion of
21 contraband or evidence of a violation of condition of release.
22 Failure to submit to a search may be grounds for revocation of
23 your supervised release, and you shall warn all other
24 residents that the premises you occupy may be subject to
25 search pursuant to this condition.

1 Number two, you shall pay any restitution balance
2 prior to the final six months of supervision on a schedule to
3 be set by your probation officer.

4 Number three, you shall provide your probation
5 officer with access to any requested financial information.

6 And, number four, you shall not incur new credit
7 charges or open additional lines of credit without the
8 approval of the probation office.

9 This is the judgment and sentence of the Court,
10 considering the Sentencing Reform Act of 1984, considering the
11 Guidelines as advisory, considering the factors under 18,
12 U.S.C., 3553, and, in particular, the nature and circumstances
13 of this offense and the history and the characteristics of
14 this defendant, to reflect the seriousness of the offense, to
15 promote respect for the law, and to provide just punishment
16 for the offense.

17 Now I need to advise you -- well, did you do any
18 time in jail?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: I need to advise you, you have
21 fourteen days from today to appeal this sentence or any ruling
22 I have made in imposing this judgment and sentence upon you.

23 Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You're represented by Ms. Nouri. Are

11:21:41 1 you satisfied with her acting as your attorney in this case?

11:21:43 2 THE DEFENDANT: Yes, Your Honor.

11:21:44 3 THE COURT: Has she done for you everything you've
11:21:47 4 asked her to do in regards to representing you in this case?

11:21:49 5 THE DEFENDANT: Yes, Your Honor.

11:21:50 6 THE COURT: Has she failed to do for you anything
11:21:51 7 you've asked her to do in acting as your attorney in this
11:21:54 8 case?

11:21:54 9 THE DEFENDANT: No, Your Honor.

11:21:55 10 THE COURT: Anything further on behalf of the
11:21:57 11 government?

11:21:57 12 MS. MAHONEY: Yes, Your Honor. I move to dismiss
11:22:01 13 Counts Fourteen and Sixteen pursuant to the plea agreement.

11:22:04 14 THE COURT: What did you say?

11:22:05 15 MS. MAHONEY: Counts Fourteen and Sixteen, I move to
11:22:09 16 dismiss.

11:22:09 17 THE COURT: Oh, I thought you said through. The
11:22:12 18 Court orders dismissed Counts Fourteen and Sixteen.

11:22:16 19 Probation, have I covered everything?

11:22:18 20 MR. SMITH: I think so, Your Honor, just the joint
11:22:21 21 and several language for restitution.

11:22:23 22 THE COURT: Restitution shall be joint and severally
11:22:25 23 with all the codefendants.

11:22:28 24 MR. SMITH: I have codefendant Joshua Stamps and Mr.
11:22:28 25 Esquivel.

11:22:34 1 THE COURT: What?

11:22:34 2 MS. NOURI: Stamps and Esquivel, Your Honor.

11:22:36 3 THE COURT: Just the two?

4 MS. NOURI: Yes.

11:22:37 5 MR. SMITH: Yes.

11:22:37 6 THE COURT: Joint and severally with Defendant

11:22:41 7 Stamps and Esquivel. All right.

11:22:44 8 Mr. Smith, has anything gone on you don't

11:22:47 9 understand?

11:22:48 10 THE DEFENDANT: No, Your Honor.

11:22:49 11 THE COURT: I'm sitting up here trying to determine

11:22:53 12 if I need to -- Mr. Smith, I'm not sure there are any of the

11:23:01 13 other defendants that are going to get probation.

11:23:05 14 MS. MAHONEY: Your Honor, I am recommending

11:23:07 15 probation for also Mr. Richard and Randy Stamps, so ...

11:23:13 16 THE COURT: Oh, okay. All right.

11:23:14 17 MS. MAHONEY: Of course, it's up to the Court.

11:23:16 18 THE COURT: Well, I was going to suggest --

11:23:18 19 MS. NOURI: May I withdraw Document 159, Your Honor?

11:23:22 20 THE COURT: Yes, if we can find it. Is that this

11:23:26 21 order?

11:23:26 22 MS. NOURI: Yes.

11:23:27 23 THE COURT: I thought Ms. Mahoney supplied that.

11:23:30 24 MS. NOURI: Thank you.

11:23:31 25 THE COURT: All right. Anything further by anyone?

11:23:36 1 MS. MAHONEY: No, thank you, Your Honor.

11:23:37 2 THE COURT: The only thing I was getting ready to
11:23:40 3 say, Mr. Smith, I don't know where you live or if you have any
11:23:45 4 contact with the family of other defendants in this case, but
11:23:49 5 you might be a little careful about discussing with other
11:23:54 6 individuals about -- related to getting probation out of this
11:24:00 7 case, because it doesn't happen very often and it might not be
11:24:04 8 well received.

11:24:05 9 THE DEFENDANT: Yes, Your Honor.

11:24:06 10 THE COURT: And I think your attorney can tell you
11:24:08 11 about that. All right?

11:24:09 12 THE DEFENDANT: Thank you, Your Honor.

11:24:10 13 THE COURT: Probation, do you need to see him before
11:24:12 14 he leaves?

11:24:13 15 MR. SMITH: We'll take care of it.

11:24:15 16 THE COURT: All right. Thank you. Good luck to
11:24:17 17 you, Mr. Smith.

11:24:18 18 MS. NOURI: Thank you.

19 *(The hearing concluded at 11:24 a.m.)*

20 * * * * *

21

22

23

24

25

CERTIFICATE

I, Sandra D. Lamken, Registered Professional Reporter, duly appointed, qualified, and official court reporter for the United States District Court, Western District of Missouri, do hereby certify that the foregoing is a correct transcript from the stenographically reported proceedings in the above-entitled matter. The proceedings were reported in mechanical and computer stenography and transcribed by computer.

/S/Sandra D. Lamken
Sandra D. Lamken, RPR
Federal Official Court Reporter

Date: May 16, 2016